

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5164 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

-----

KUTCH DISTRICT PANCHAYAT

Versus

KISHOR D VARU

-----

Appearance:

MR HS MUNSHAW for Petitioner

MR KV GADHIA for Respondent No. 1

-----

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/07/98

ORAL JUDGEMENT

Rule. Mr. K.V.Ghadia learned advocate for the respondent waives service of Notice of Rule on behalf of the respondent.

2. Kutch District Panchayat has filed the present petition to challenged the award of the Labour Court, Rajkot in Reference No. 262 of 1991. It was renumbered as Reference No.273 of 1996. The respondent Kishor D. Varu was working as a daily wager in the road maintenance

work with the present petitioner. He was dismissed from the said job in the year 1982. Therefore, he raised an industrial dispute by raising a contention that he had worked for more than 240 days in a year. He has been retrenched without following due procedure laid down in section 25F of the ID Act. It was further contended by him that juniors to him were taken on job and they were absorbed as permanent employees and he has been denied the opportunity of being permanent employee of the present petitioner. As there could not be any reconciliation between the parties, the competent authority made a reference to the Labour Court. After hearing both the sides the Labour Court came to the conclusion that the services of the respondent were wrongfully terminated without following procedure under section 25F. The Labour Court also found that juniors to him were retained in service and they are regularised. Therefore, in the circumstances by the award of the Labour Court dated 26.11.97, the Labour Court reinstated the respondent without any back wages but with continuity of service.

3. The petitioner has come before this Court against the said award. The learned advocate for the petitioner Mr. Munshaw urged before me that as a matter of fact there was no retrenchment of the respondent. He contended that the respondent was working as a daily wager as a road maintenance labourer but on account of scarcity said work and on the scarcity work he was to get Rs.5.50 per day. Because of the same he himself has voluntarily left the job. Thus according to him as the respondent had abandoned the job there was no question of any retrenchment of him. He further submitted that from the fact that the reference is of the year 1991 it will be clear that the workmen had not taken any steps for 8-10 years and that indicates that he was not interested in the job and he voluntarily left the job. He further submitted that as per the Annexure.B to this petition, the petitioner had not contacted the present petitioner at anytime and that also will clearly indicate that he is not interested in the job in view of the daily wage of Rs.5.50 per day. At the outset it must be stated that I am considering this petition under articles 226/227 of the Constitution of India. while considering such a proceeding under article 226/227 of the Constitution of India I am not sitting as an appellate authority and I cannot have reassessment of the evidence and come to a different conclusion. I can interfere with the finding of the Labour Court only in case the said findings are perverse or grossly erroneous resulting into injustice. The Labour Court has recorded a finding of facts after

appreciation of the evidence produced before it.

4. The Annexure-B on which the learned advocate for the petitioner has vehemently relied upon itself falsify the case of the petitioner that the workmen had voluntarily left the job and he abandoned the job. Annexure.B is a copy of the letter written by the DDO to the present petitioner on 13.1.1983. In the said letter it has been clearly mentioned that present respondent and one more person named Harishsinh C.Chauhan were dismissed by him and they should be provided jobs. Copy of the letter is also sent to the present petitioner as well as said Chhauhan. Thus, it clearly indicates that as the respondent was dismissed by the petitioner he had approached the DDO making grievances regarding his dismissal and seeking reinstatement in service. If there was not such a case, then there was no necessity for the DDO to mention that he has been dismissed from service and to provide job for him. Therefore, the claim of the petitioner that the respondent had voluntarily stopped coming to the job is a falsehood. Learned advocate for the petitioner Mr. Munshaw urged before me that there is nothing on record to show that after this letter dated 13.1.83 the respondent had approached the present petitioner in order to secure the job. As a matter of fact the respondent had made a statement that during the proceedings he approached from time to time for getting a job but he was denied the job. Now, if this letter Annexure.B is seen, then it would be quite clear that as per this letter present petitioner was to act and in that case he ought to have issued the order of appointment in favour of the respondent. When it is expected of the petitioner to issue appointment order, he cannot contend that the workman ought to have approached him though the workman had approached him as per his claim. Even assuming that the workman had not approached the petitioner it would not justify his earlier action of dismissing him from service. Once he has dismissed him from service, it was incumbent upon him to issue fresh order asking the workman to join his duties. When he fails to do so then the dismissal continues. Therefore, I am unable to hold that the Labour Court has committed any perversity or illegality in coming to the conclusion that that the workman had been retrenched. Admittedly no procedure under section 25F of the ID Act was followed in dismissing him from service. Consequently said retrenchment has become illegal.

5. Mr. Munshaw further urged before me that the claim of the respondent ought to have been rejected on account of delay and latches. He contended that

reference is of 1991 and it was decided in 1997 and the dismissal had taken place in the year 1982. It is true that Reference is bearing No. 292 of 1991. But para no.1 itself shows that the order of reference was passed in the year 1990. It is not clear from the material on record as to on what date the workman had approached the competent authority but apart from this the Labour Court has taken into consideration the lapse on the part of the workman, the Labour Court has denied him back wages. Merely because there are some lapse he could not be non-suited in view of the facts of this case. That lapse was tried to be explained by the workman by saying that he was approaching various TDOs as suggested by the higher authorities and everywhere he was turned down. Then he further averred that even after he had approached the conciliation officer two juniors to him were made permanent. This has been mentioned in the Labour Court in its award while discussing issue no.2. Therefore, in the circumstances it can be said that the Labour Court has committed any perversity or gross error resulting into injustice by allowing the reference in question. The workman has been adequately penalised for the lapse on his part by denying him backwages. I therefore, hold that the Labour Court has not committed any illegality or error resulting into injustice or perversity in passing the award and therefore, present petition deserves to be rejected. The petition is accordingly rejected. Rule discharged. No order as to costs.

(S.D.Pandit.J)